

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3944 of 1999

with

SPECIAL CIVIL APPLICATION NO. 4083 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

HEMANT PLASTICS & CHEMICALS LTD

Versus

UNION OF INDIA

Appearance:

M/S TRIVEDI & GUPTA for Petitioners

MR MUKESH R SHAH for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE C.K.BUCH

Date of decision: 06/08/1999

ORAL JUDGEMENT

Rule. Mr.M.R.Shah appears and waives service of Rule on behalf of the respondents. In the facts and circumstances of the case, the matters are taken up for

final hearing today.

In both the petitions, the orders passed by the appellate authority on stay applications have been challenged by the petitioners. Being aggrieved and dissatisfied with the orders in original passed by the adjudicating authority, appeals were filed and they are pending before the appellate authority. Along with appeals, applications were stay were made which came to be rejected by the appellate authority.

Our attention was invited by the learned counsel for the petitioners to the following statements of the appellate authority while disposing of stay application in SCA 3944 of 1999 :

"This point requires examination in details.

Prima facie, thus, the appellants do not have arguable case".

(Similar statement is made in Special Civil Application No. 4083 of 1999).

Learned counsel for the petitioners submitted that the above two sentences cannot go together. If the appellate authority is of the opinion that "the point requires examination in details" , it goes without saying that "prima facie , arguable case has already been made out". Thus, stating on one hand that "point requires examination in details' and on the other hand that "prima facie, appellants do not have arguable case" are inconsistent and contradictory.

In Special Civil Application No. 3944 of 1999, an additional argument was advanced that a similar order was passed earlier by the appellate authority earlier when application for stay was made and the petitioner was asked to predeposit an amount of Rs. 50 lacs. Said action was challenged. Petition was allowed and the matter was remanded to the appellate authority for considering the same and decide it on merits. Now the appellate authority has directed predeposit of Rs. 60 lacs. It is, therefore, contended that since the petitioner had approached this Court, the amount is raised from Rs. 50 lacs to Rs. 60 lacs. It was further contended that though the point is concluded by the decision of CEGAT in Everest Convertors vs. Collector of Central Excise, Calcutta II, 1995 (80) ELT 91, and though attention of the appellate authority was invited, it is

not considered and order was passed.

Mr. Shah for the respondents, on the other hand, submitted that the order in original is in accordance with law.

In our opinion, when the appellate authority itself was of the opinion that the point requires examination in details , it cannot be said that there was no arguable case.

Only on this ground and without observing anything on merits, petitions deserve to be allowed and are accordingly allowed. The orders passed by the appellate authority on the stay applications are quashed and set aside. The appellate authority will now decide them afresh in accordance with law after considering the facts and circumstances of the case. The appellate authority will also consider the decisions on which reliance was placed by the petitioners. Petitions are accordingly allowed. Rule made absolute. No order as to costs.

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parekh